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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,771	10/23/2002	David J. Stevens	D-43368-01	9664

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EXAMINER

SIPOS, JOHN

ART UNIT PAPER NUMBER

3721

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/070,771

**Applicant(s)**

STEVENS, DAVID J.

**Examiner**

John Sipos

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-15 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

**Claims 1 and 7-10** are rejected under 35 U.S.C. ' 102(b) as being clearly anticipated by the patent to Reichel (2,757,495). The patent to Reichel shows a packaging process and apparatus comprising the feeding of a tubing to a slitting mechanism 58 for longitudinally slitting the tube, an unfolding means 62 for forming the slit tube into a flat web, calendering rolls 63-71 to feed the web, former 73 for forming the web around a product, longitudinal sealing mechanism 78 for sealing the longitudinal edges of the web and a mechanism for transversely sealing the ends of the package. Note that Reichel states in column 5, line 74 et. seq. that the tube forming operation may be replaced by the operation set forth in the patent to Conti (2,686,128). The "heat" sealing operation set forth in claims 1 and 7 is read on the use of heaters (such as 27,28 of Conti) in the longitudinal sealing process; the "sealing system" of claim 10 is read on the sealing mechanism 83 of Conti.

**Claim 2** is rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Reichel (2,757,495) in view of Kawaguchi (4,640,081). The Reichel operation lacks the cutting/sealing of the packaging material and the subsequent vacuum sealing. The patent to Kawaguchi shows a packaging operation wherein bags are formed by cutting and sealing a tubing material (Figure 1) and then feeding the cut package to a vacuum/sealing operation in housing 15. It would have been obvious to one skilled in the art to cut individual packages from the tubing of Reichel and evacuate their interior prior to sealing as taught by Kawaguchi to better preserve the product under vacuum conditions.

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**Claims 4 and 13** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Reichel (2,757,495) in view of James (3,592,372). The Reichel operation lacks the tracking of the packaging material. The patent to James shows a packaging operation wherein the position of the packaging material is tracked by sensors 42,43 and adjusted by mechanism 11-24 when it gets out of proper position while it is being fed to the packaging device. In this manner the relative position of the material and the packaging machine is maintained to reduce defective packages. It would have been obvious to one of ordinary skill in the art to provide the Reichel device with a material tracking and adjusting means as shown by James to maintain the material in proper position.

**Claims 5 and 12** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Reichel (2,757,495) in view of Simons (4,289,560) . The Reichel operation lacks the cutting of the edges of the packaging material. The patent to Simons (4,289,560) shows a material forming operation wherein the low quality excess edges of the material are trimmed by cutters 16 (see column 1, line 19 et seq.). It would have been obvious to one of ordinary skill in the art to trim the edges of the material of Reichel to remove its low quality edges.

**Claims 6 and 11** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Reichel (2,757,495) in view of Mugnai (4,601,159) . The Reichel operation lacks the use of an impulse sealer. The patent to Shanklin shows a packaging operation wherein packages are formed from a tube and then transversely sealed with impulse 18-20. It would have been obvious to one skilled in the art to use impulse sealer in the device

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of Reichler as taught by Mugnai for the known benefits of impulse sealing, such as accurate and short sealing times.

**Claim 15** is rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Reichel (2,757,495) in view of Ballestrazi (4,381,637). The Reichel operation lacks sensing means for auto-positioning of the products. The patent to Ballestrazi shows a packaging machine wherein the position of the product and the film for correcting the relative position of the film and the product (see column 2, line 48 et seq.) It would have been obvious to one skilled in the art to provide Reichel with product and film sensing/control means as shown by Ballestrazi to control the relative positions of the film and products.

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**Claims 1 and 7-10** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Saito (4,947,623) in view of Piltz (4,813,208) or Buchner (4,627,221) or Dyer (3,342,657). The patent to Saito shows a packaging process comprising the calendaring rolls 3c to feed a web, mechanism 2 for feeding a product to the web, former 3e for forming the web around a product, sealing mechanism 3f for sealing the longitudinal edges of the web and a mechanism 4 for transversely sealing the ends of the package. The Saito operation lacks the use of a tube for the initial wrapping web. The secondary references all teach the concept of feeding a tubing to a slitting mechanism for longitudinally slitting the tube and an unfolding means for forming the slit tube into a flat web for subsequent use in a packaging operation. It would have been obvious to one skilled in the art to form the web of Saito from a tube as shown by any of the secondary references to ease the formation of the web and to maintain the interior clean.

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**Claim 2** is rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Saito (4,947,623) in view of Piltz (4,813,208) or Buchner (4,627,221) or Dyer (3,342,657) and further in view of Kawaguchi (4,640,081). The Saito operation lacks the cutting/sealing of the packaging material and the subsequent vacuum sealing. The patent to Kawaguchi shows a packaging operation wherein bags are formed by cutting and sealing a tubing material (Figure 1) and then feeding the cut package to a vacuum/sealing operation in housing 15. It would have been obvious to one skilled in the art to cut individual packages from the tubing of Saito and evacuate their interior prior to sealing as taught by Kawaguchi to better preserve the product under vacuum conditions.

**Claim 4 and 13** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Saito (4,947,623) in view of Piltz (4,813,208) or Buchner (4,627,221) or Dyer (3,342,657) and further in view of James (3,592,372). The Saito operation lacks the tracking of the packaging material. The patent to James shows a packaging operation wherein the position of the packaging material is tracked by sensors 42,43 and adjusted by mechanism 11-24 when it gets out of proper position while it is being fed to the packaging device. In this manner the relative position of the material and the packaging machine is maintained to reduce defective packages. It would have been obvious to one of ordinary skill in the art to provide the Saito device with a material tracking and adjusting means as shown by James to maintain the material in proper position.

**Claims 5 and 12** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Saito (4,947,623) in view of Piltz (4,813,208) or Buchner (4,627,221) or Dyer (3,342,657) and further in view of Simons (4,289,560). The Saito operation lacks

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the cutting of the edges of the packaging material. The patent to Simons (4,289,560) shows a material forming operation wherein the low quality excess edges of the material are trimmed by cutters 16 (see column 1, line 19 et seq.). It would have been obvious to one of ordinary skill in the art to trim the edges of the material of Saito to remove its low quality edges.

**Claims 6 and 11 are** rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Saito (4,947,623) in view of Piltz (4,813,208) or Buchner (4,627,221) or Dyer (3,342,657) and further in view of Mugnai (4,601,159) . The Saito lacks the use of an impulse sealer. The patent to Shanklin shows a packaging operation wherein packages are formed from a tube and then transversely sealed with impulse 18-20. It would have been obvious to one skilled in the art to use impulse sealer in the devise of Saito as taught by Mugnai for the known benefits of impulse sealing, such as accurate and short sealing times.

**Claim 15 is** rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Saito (4,947,623) in view of Piltz (4,813,208) or Buchner (4,627,221) or Dyer (3,342,657) and further in view of Ballestrazi (4,381,637) . The Saito operation lacks sensing means for auto-positioning of the products. The patent to Ballestrazi shows a packaging machine wherein the position of the product and the film for correcting the relative position of the film and the product (see column 2, line 48 et seq.) It would have been obvious to one skilled in the art to provide Saito with product and film sensing/control means as shown by Ballestrazi to control the relative positions of the film and products.

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***RESPONSE TO APPLICANT'S ARGUMENTS***

Applicant's arguments with respect to the claims have been considered but are not persuasive. Applicant's arguments regarding the heat sealers 27/ 28 of the Reichel/Conti patent that it is merely a "means to enhance" the adhesive seal is not convincing since the claims merely recite "heat sealing" operation without any specifics of the operation. The sealing of Reichel/Conti is considered such a heat-sealing operation since heat is applied during the sealing operation.

Regarding the rejections based on Saito, Applicant argues that the secondary references to Piltz, Buchner and Dyer do not teach the forming of a flat packaging material around the product. This is not persuasive since the basic reference to Saito teaches the packaging operation wherein a flat material is fed to a packaging mechanism that forms the material around fed products. The secondary references were used in the rejection to show the well known process of forming a tube, cutting it, flattening it and feeding it to a processing station. These references were not used to show the packaging operation but rather the material forming and processing operation.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any



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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



**John Sipos**  
**Primary Examiner**  
**Art Unit 3721**